REMARKS/ARGUMENTS

This is a Response to the Office Action mailed November 26, 2003, in which a three (3) month Shortened Statutory Period for Response has been set, due to expire February 26, 2004. Enclosed is our check to cover the fee for a one-month extension of time, to March 26, 2004, as well as the extra claims. One (1) claim, including one (1) independent claim, was paid for in the application. Claim 1 has been canceled. New claims 2-33 have been added. No new matter has been added to the application. The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090. Claims 2-33 are pending.

Objections

The specification was objected to because it contains a computer program listing consisting of more than 300 lines.

The specification was also objected to because the spacing of the lines of the specification (pages 6-97) is not double spaced.

The disclosure was objected to because it includes figures (pages 9-11) outside the submitted drawings indicated in "Brief Description of the Drawings" section.

A substitute specification is being submitted herewith that addresses each of the Examiner's objections to the original specification. The computer program code portions of the specification have been canceled and moved to a Computer Program Listing Appendix on a compact disc. The spacing of the lines of the specification are now double spaced. The figures in the specification outside the submitted drawings previously indicated in the "Brief Description of the Drawings" section have been canceled and submitted as new drawings, and are now indicated in the "Brief Description of the Drawings" section. No new matter has been added.

The Computer Program Listing Appendix is being submitted in duplicate on two compact discs labeled "Copy 1" and "Copy 2". The two compact discs are identical. The files contained on each of the compact discs include:

upgrade.c, 3/26/04, 269KB

upgrade.h, 3/26/04, 24.5KB

ngpblist.c, 3/26/04, 25KB

upgrade.ini, 3/26/04, 20KB

ngextrn.h, 3/26/04, 19.5KB

These files are in IBM-PC, Windows NT format. Each compact disc is further labeled with the following information: name of each inventor, title of the invention, docket number, and a creation date of the compact disc.

35 U.S.C. §102(e) Rejections

Claim 1 was rejected under 35 U.S.C. §102(e) as being anticipated by Sandler et al., U.S. Patent No. 6,378,069 ("Sandler").

Claim 1 has been canceled.

New claim 2 recites, *inter alia*, "A system for automatically upgrading software on a device, the system comprising: . . . a server utility stored on the server and . . . capable of determining a configuration of the client device and initiating a software upgrade of the client device based on the determined configuration of the client device; and a client utility stored on the client device and . . . capable of determining an availability of a specific version of the client upgrade software on the server and initiating a software upgrade of the client device based on the determined availability of the specific version of client upgrade software on the server."

New claim 12 recites, *inter alia*, "A method for automatically upgrading software on a client device . . . the method comprising: . . . providing a server utility stored on the server and executable thereon, the server utility in a first instance initiating an installation of a first version of client upgrade software on the client device; and providing a client utility stored on the client device and executable thereon, the client utility in a second instance initiating an installation of a second version of client upgrade software on the client device."

New claim 23 recites, *inter alia*, "A method for automatically upgrading software on a client device . . . the method comprising: . . . providing a server utility stored on the server and executable thereon, the server utility from time to time initiating an installation of a first version of client upgrade software on the client device; and providing a client utility stored on the

client device and executable thereon, the client utility from time to time initiating an installation of a second version of client upgrade software on the client device."

Applicants respectfully submit that Sandler does not disclose a system for automatically upgrading software on a device, the system comprising a server utility for initiating an installation of client upgrade software on the client device based on a determined configuration of the client device, and a client utility for initiating an installation of client upgrade software on the client device based on a determined availability of the client upgrade software on the server. To the contrary, Sandler discloses an apparatus (100) including a software download server (112), a processor (202), a base station subsystem (104), and a subscriber unit (106). The processor (202) initiates providing software updates from the software download server (112) to the subscriber unit (106), where the base station subsystem (104) transmits the software updates to the subscriber unit (106) across a radio link (118). It should be noted that the software upgrade process of Sandler can only be initiated by the processor (202) on the server end. Figure 4 in Sandler clearly illustrates the software download procedure, and shows that after the procedure commences at step 400, the processor (202) must initiate the download by scanning the subscriber database (206) at step 402. The subscriber unit (106) does not have any kind of client utility capable of initiating a software upgrade of the subscriber unit (106) or determining an availability of a specific version of upgrade software on the server (112). Thus, Sandler does not teach a system for automatically upgrading software on a device, the system comprising a server utility for initiating an installation of client upgrade software on the client device based on a determined configuration of the client device, and a client utility for initiating an installation of client upgrade software on the client device based on a determined availability of the client upgrade software on the server.

Conclusion

Overall, the cited reference does not singly, or in any motivated combination, teach or suggest the claimed features of the embodiments recited in independent claims 2, 12 and 23, and thus such claims are allowable. Because the remaining claims depend from allowable independent claims 2, 12 and 23, and also because they include additional limitations, such

claims are likewise allowable. If the undersigned attorney has overlooked a relevant teaching in any of the references, the Examiner is requested to point out specifically where such teaching may be found.

In light of the above amendments and remarks, Applicants respectfully submit that all pending claims are allowable. Applicants, therefore, respectfully request that the Examiner reconsider this application and timely allow all pending claims. Examiner El Hady is encouraged to contact Mr. Abramonte by telephone to discuss the above and any other distinctions between the claims and the applied reference, if desired. If the Examiner notes any informalities in the claims, he is encouraged to contact Mr. Abramonte by telephone to expediently correct such informalities.

Respectfully submitted,

Seed Intellectual Property Law Group PLLC

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FXA/JMH:asl

Enclosures:
    Postcard
    3 Replacement Sheets of Drawings (Figures 2-7)
    Substitute Specification
    Redlined Substitute Specification

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